Manitoba

Annual Report 1986 - 87

Manitoba Labour Board

For the Fiscal Year Ended March 31, 1987

Manitoba

Minister of Labour

Winnipeg, Manitoba, CANADA
R3C 0V8

The Honourable George Johnson,
Lieutenant-Governor of Manitoba,
235 Legislative Building,
Winnipeg, MB.
R3C 0V8

Your Honour:

I have the honour to present to you the Annual Report of The Manitoba Labour Board, covering the period from April 1, 1986 to March 31, 1987.

Sincerely,

Muriel Smith

Muriel Smith

Manitoba

Deputy Minister of Labour

Winnipeg, Manitoba, CANADA
R3C 0V8

Honourable Muriel Smith,
Minister of Labour,
343 Legislative Building,
Winnipeg, MB
R3C 0V8

Madam:

I have the privilege to present to you the Annual Report of The Manitoba Labour Board, covering the period from April 1, 1986 to March 31, 1987.

Respectfully submitted,

Mary Eady

Mary Eady,
Deputy Minister of Labour.

Manitoba

Labour

The Manitoba Labour Board

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Honourable Muriel Smith,
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Madam:

It is my pleasure to present to you the Annual Report of The Manitoba Labour Board, covering the period from April 1st, 1986 to March 31st, 1987.

Respectfully submitted,

J.M.P. Korpesho,
Chairperson

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INTRODUCTION

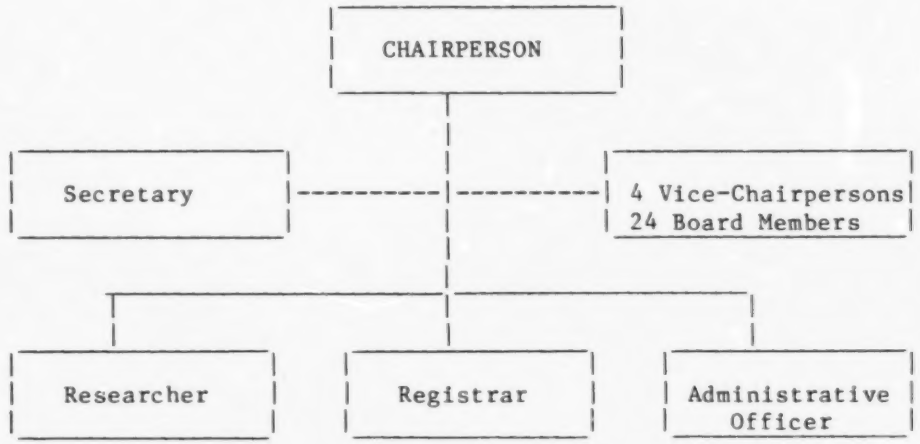
Role and Structure

The Manitoba Labour Board is responsible for the adjudication of matters referred under The Labour Relations Act, The Workplace Safety and Health Act, and The Pay Equity Act. The Board also acts as a wages board or the adjudicating body for the administration of The Payment of Wages Act, The Employment Standards Act, and The Remembrance Day Act.

The Labour Board is a quasi-judicial body comprised of a full-time Chairperson, four part-time vice-chairpersons, and 24 part-time members. There is equal representation of employer and employee views.

Although the Board conducts numerous formal hearings annually, a significant portion of the Board's workload is administrative in nature. Where possible, the Board encourages the settlement of disputes in an informal manner by appointing one of its board officers to assist the parties in resolving outstanding issues and complaints.

Organization Chart



Administrative Services

The position of Administrative Officer was filled during the reporting period. The incumbent is responsible for the administrative support of the Board Office including fiscal control and accountability for operational expenditures, office systems, procedures development and management to ensure the departmental and government policies are implemented.

The Board had an administrative support staff of five full-time and two part-time staff.

Field Services

The Registrar is the official responsible for the supervision of the day-to-day field services of the Board. All applications filed with the Board pursuant to The Labour Relations Act are initially processed through the Registrar's Office. The Registrar determines the hearing dates, assures the effective and efficient processing of each application and communicates with all parties in all matters relating to the scheduling of hearings or specific problems in the processing of any applications.

The Board has a field staff of three Board Officers who report directly to the Registrar. On a rotating schedule, two Board Officers are assigned to deal with Labour Relations cases, while the third Board Officer is assigned to deal with Payment of Wages/Employment Standards related matters.

The Board Officers conduct investigations with respect to various applications filed with the Board. Board Officers are frequently appointed to act as Board Representatives in allegations of unfair labour practices, to endeavour to effect a settlement of the complaint. They also perform a variety of functions including acting as Returning Officer in Labour Board conducted votes, attending Board hearings, as well as assisting the Registrar in the processing of applications.

Manitoba Labour Board Library

The Labour Board maintains a small collection of texts and journals dealing with industrial relations and labour law. Since 1985, all arbitration awards and collective agreements must be filed with the Manitoba Labour Board. Copies of such material may be viewed at the Board's office.

It should be noted that access to these materials is limited to the Board premises. Library hours are Monday to Friday, 8:30 a.m. to 12:00 noon.

Case Management System

The Case Management System was developed to monitor the handling of applications and identify any delays which affect the Board's objective of effectively and efficiently processing all cases.

The system was developed for use by senior management to provide vital statistical information and for use as a basis of assessment and recommendation for improvements or changes in the Board's practices and procedures. It is important to note that the reporting system was developed for internal use only.

The Board is looking to automate the case monitoring system during the next reporting period.

Counsel to the Manitoba Labour Board

The Attorney-General's Department provides counsel to the Board who is responsible for providing the following support:

- legal assistance as required by the Board in matters such as legal research, opinions and the development and updating of the various forms used by the Board.

- representing the Board's interests in proceedings before the Courts.

- summarization and headnoting of all Board's Reasons for Decision, as well as ensuring the Board's Researcher prepares headnotes for arbitration decisions.

YEAR IN REVIEW

TOTAL NUMBER OF APPLICATIONS FILED WITH THE MANITOBA LABOUR BOARD

APRIL 1st, 1986 - MARCH 31st, 1987

UNDER THE LABOUR RELATIONS ACT	-	470
UNDER THE EMPLOYMENT STANDARDS ACT	-	377
UNDER THE PAYMENT OF WAGES ACT	-	360
UNDER THE VACATIONS WITH PAY ACT	-	2
UNDER THE WORKPLACE SAFETY & HEALTH ACT	-	53
		1262

TOTAL NUMBER OF APPLICATIONS DISPOSED OF BY THE MANITOBA LABOUR BOARD

APRIL 1st, 1986 - MARCH 31st, 1987

UNDER THE LABOUR RELATIONS ACT	-	448
UNDER THE EMPLOYMENT STANDARDS ACT	-	372
UNDER THE PAYMENT OF WAGES ACT	-	350
UNDER THE VACATIONS WITH PAY ACT	-	1
UNDER THE WORKPLACE SAFETY & HEALTH ACT	-	50
		1221

PUBLICATIONS

The Manitoba Labour Board presently publishes or makes available the following:

- "The Manitoba Labour Board Tri-Monthly Report" - A tri-monthly publication of selected information and statistics dealing with matters before the Board.

- "Compendium of Grievance Arbitration Decisions" - A publication summarizing all arbitration awards rendered in the Province of Manitoba and filed with the Board during the calendar year.

- "Guide to the Labour Relations Act" - A booklet explaining in lay-persons' terms the various provisions of The Labour Relations Act, and the role of the Manitoba Labour Board and conciliation and mediation services. (Available in both English and French versions).

- "Annual Report" - A publication disclosing the Manitoba Labour Board's staffing and membership, as well as highlights of significant Board and court decisions, and statistical analysis of the various matters dealt with during the reporting period.

MEMBERS OF THE BOARD

In the year under review, the Board consisted of the following members:

John Korpesho - Chairperson

Mr. Korpesho was appointed Chairperson of the Board in 1983. Mr. Korpesho has been with the Board since 1973, during which time he held the positions of Board Officer, Registrar, and Vice-Chairperson/Registrar. He has served on a number of Labour Management committees and is a graduate of the University of Manitoba certificate program in Public Administration.

VICE-CHAIRPERSONS:

Leon Mitchell, Q.C. was appointed a Member and Vice-Chairperson of the Board in 1983 on a part-time basis; he had recently been re-appointed to the position. He was serving as counsel to the law firm of Taylor, Brazzell and McCaffrey. It is with regret that we inform the labour relations community that Mr. Mitchell passed away during this reporting period.

S. Glenn Sigurdson, Q.C. was first appointed Vice-Chairperson of the Board in 1980 on a part-time basis; he was recently re-appointed to the position. Mr. Sigurdson is a partner in the firm of Taylor, Brazzell and McCaffrey. His practice emphasis is in civil litigation and labour relations.

In consultation with the various labour and management groups, two additional Vice-Chairpersons were appointed to the Board for a five year period commencing August 1st, 1985. They are as follows:

Diane Jones was appointed a member and Vice-Chairperson of the Board in 1985. Until 1984, Ms. Jones practiced law with the firm of Aikins, MacAulay and Thorvaldson.

Joy Margaret Kathleen Cooper was appointed a member and Vice-Chairperson of the Board in 1985. Since 1982, Ms. Cooper has been with Walsh, Micay and Company, practicing family law exclusively.

BOARD MEMBERS - EMPLOYER REPRESENTATIVES

A. Edward Stanton was appointed to the Board in 1985. He graduated from the University of Manitoba with a Bachelor of Commerce (Honours) in 1949, and was employed by PRG Industries until his retirement in 1982.

Bob Sparrow was first appointed to the Board in 1983. He brings with him an extensive knowledge of the hospitality industry and currently is the Vice President of the Manitoba Hotel Association.

Frank Van Ginkel was first appointed to the Board in 1978. He has been involved in the construction industry for the greater part of his career and currently is a principle with Trident Construction Ltd.

Laurina Perfumo was appointed to the Board in 1985. She had been actively involved in the hospitality industry in her former position as the Assistant to the Executive Vice-President of the Manitoba Hotel Association. Ms. Perfumo retired from the Board effective May, 1986.

Joe Freed was appointed to the Board as an in 1985. At present, he is serving as Chairman of the Board for Freed and Freed of Canada Ltd., as well as, President of Cambrian Clothing Ltd.

C. G. Marshall has been a member of the Board since 1983. For 29 out of the 48 years he was employed with Western Grocers, a division of Westfair Foods.

Denis E. Sutton joined the Board in 1983. He currently holds the position of Director, Industrial Relations for Bristol Aerospace Ltd.

Elizabeth M. Black was appointed to the Board in 1985. She has been employed in the capacity of Personnel/Human Resource Manager in a variety of businesses since 1970.

Mr. Joseph P. West joined the Board in 1983. Prior to his retirement in 1984, he spent 40 years with Canada Packers, serving as both Industrial Relations Manager and Employee Relations Manager.

W. J. Ptolemy was first appointed to the Board in 1978. In 1964, Mr. Ptolemy left Western Builders Specialties Limited, where he had been employed as a Manager to pursue his own Construction Supply Business.

Jack McCormick was first appointed to the Board in 1977. Before his retirement, Mr. McCormick served as Senior Vice-President of Bristol Aerospace Ltd.

BOARD MEMBERS - EMPLOYEE REPRESENTATIVES

William F. Iverson has served on the Board since 1970. In 1967, Mr. Iverson was elected Business Manager for the Bricklayers Local.

John E. Pullen joined the Board in 1978. At present, he is working with the Manitoba Government Employees Association as Director of Operations.

B. Atamanchuk was appointed to the Board in 1985. He is presently employed by the Manitoba Food and Commercial Workers Union as a Union Representative.

Leo Desilets was appointed to the Board in 1985. In 1973, he became the Sheet Metal Workers International Association's full time Business Manager and Financial Secretary.

Karen Graham joined the Board in 1985. She is currently serving as an International Representative for the Amalgamated Clothing and Textile Workers.

Maureen Morrison joined the Board in 1983. Since 1980, Ms. Morrison has been employed as a Staff Representative for the Canadian Union of Public Employees.

Hugh McMeel was first appointed to the Board in 1983. For the last 12 years, Mr. McMeel has served as a full time Union Representative for the United Food and Commercial Workers participating extensively in negotiations and allied labour relations affairs.

Anne Cyr was appointed to the Board in 1983. She has held the position of Business Manager for the Service Employees International Union since 1979.

R. J. Henderson One of the most senior board members, he was appointed to the Board in 1969. Mr. Henderson held the position of Regional Director of Canadian Union of Public Employees up until his retirement.

J. Art Coulter has served on the Board since 1980. He has been involved in the Labour Movement for over 40 years in both elected and appointed positions.

Brian Hunt joined the Board in 1983. He has been a member of the United Steelworkers of America since 1969, serving as an Organizer and currently is a Staff Representative.

Nick Evans first joined the Board in 1977. He has served as an Organizer for both the United Steelworkers of America and the Retail Wholesale and Department Store Union.

NEW APPOINTMENTS:

Carole Postnieks was appointed as an Employer Representative. She currently is employed as the Manager of Human Resources for Guertin Bros. Coating & Sealants Ltd.

John Read was appointed as an Employer Representative. Mr. Read joined the Manitoba Hotel Association in 1985, and presently is employed in the capacity of Executive Vice-President.

James Conner was appointed as an Employee Representative. Mr. Conner recently retired from a senior management position with this former employer, Hudson's Bay Mining and Smelting Company Limited, in Flin Flon, Manitoba.

Raymond Winston was appointed as an Employer Representative. Mr. Winston currently is the Executive Director of the Manitoba Fashion Institute, Inc.

As at the end of this reporting period, two board member positions remained vacant.

HIGHLIGHTS OF BOARD DECISIONS

DECISIONS RENDERED PURSUANT TO THE LABOUR RELATIONS ACT

CASE NO. 803/85/LRA
MANITOBA PARAMEDICAL ASSOCIATION and ST. BONIFACE GENERAL HOSPITAL and MANITOBA FOOD AND COMMERCIAL WORKERS LOCAL 832

Reasons for Decision dated April 29, 1986

The Applicant Paramedical Association filed an application for certification for a unit of cardiology technologists and technicians employed by St. Boniface General Hospital. The Respondent MFCW filed an intervention opposing the application for certification.

By decision dated April 9, 1985, with subsequent Reasons for Decision delivered June 27, 1985, the Board had determined that the unit applied for was appropriate for collective bargaining. In response thereto, the MFCW filed an application for review and rescission of the Board's decision. The Board granted the review, and determined that it would be undertaken by an expanded panel consisting of the Chairperson and a Vice-Chairperson, in addition to the members of the original panel, pursuant to s. 120 of The Labour Relations Act.

After reviewing the Reasons for Decision of the original panel, the Review Panel noted that the unit for which certification was sought would fragment the existing unit represented by the MFCW under an existing certificate.

As a result of the review of the original panel's decision and the established jurisprudence, the Board was satisfied that the original panel, in determining the appropriateness of the unit, misdirected itself by failing to consider that the onus was on the Applicant to establish that the cardiology technologists and technicians constituted an appropriate bargaining unit where these technical employees were part of an existing general employee bargaining unit. The original panel erred by asking itself whether these employees "should be denied the right to bargain separately". Rather, the question the Board should have asked itself was whether there was any sound collective bargaining reason to justify the carving out of a small unit from a larger unit, where these technical employees were now adequately and effectively represented by the union certified to bargain for these employees. The Board commented that the policy of the Board was to minimize the number of bargaining units in an establishment, provided that an effective collective bargaining relationship was not impaired. In the present case, the original panel of the Board based its decision as though the policy of the Board required the Respondent bargaining agent to justify the appropriateness of the

existing larger bargaining unit, rather than the Applicant establishing that an increase in the number of bargaining units was warranted in the circumstances of the case in order to promote effective collective bargaining. In the absence of evidence of inadequate or ineffective representation by the bargaining agent, the review panel concluded and was satisfied that there were no sufficient other reasons to disturb the status quo in this matter, although the Board noted that it might in appropriate circumstances revise the scope of existing bargaining units.

The Board further indicated that it may consider it advisable to establish a policy governing appropriate units in hospitals so that employers, unions and employees will know with greater certainty the nature of a hospital employee group which will be deemed appropriate for collective bargaining by the Board.

In the circumstances, the Board rescinded the decision of the original panel, and dismissed the application for certification filed by the Applicant Paramedical Association.

CASE NO. 1034/85/LRA
VICTOR SHACTAY and CREAMERY WORKER'S UNION, LOCAL NO. 1 and PEOPLE'S CO-OPERATIVE LTD.

Reasons for Decision dated April 10, 1986

The Applicant employee filed a complaint with the Board alleging that the union had committed an unfair labour practice contrary to section 16 of The Labour Relations Act, and requested various remedies.

The Board noted that s. 16 of the Act imposed on unions a certain standard of care that must be met in representing the rights of employees covered under collective agreements. In this particular case, section 16(a) was applicable, and the Board concluded that a union, in this case, committed an unfair labour practice by acting in an arbitrary manner and failing to take reasonable care to represent the employee's interests when employment was terminated.

As section 16 was new to The Labour Relations Act, the Board took the opportunity in its Reasons to examine this legislation in the light of comparable provisions existing in The Ontario Labour Relations Act and the Canada Labour Code in order to interpret the meaning of section 16 and the obligations imposed thereby upon unions.

The Board noted that three criteria should be examined when a complaint is filed pursuant to section 16:

(1) The nature or seriousness of the grievance;

(2) The characteristics of the bargaining agent, its resources and degree of sophistication; and

(3) The steps taken by the bargaining agent in processing the grievance.

With respect to the remedies, the Board ordered that the matter of the Applicant's termination grievance be referred to arbitration under conditions set forth in the Order.

CASE No. 690/86/LRA
LUMSDEN and UNITED STEEL WORKERS OF AMERICA, LOCAL 6166 and INCO LTD.

Reasons for Decision dated October 10, 1986

The Applicant employee filed an application with the Board seeking a determination pursuant to section 68(3) or alternatively section 68.1 of The Labour Relations Act that he was a member of a religious group which has as one of its articles of faith the belief that members of the group are precluded from being members of and financially supporting any union or professional association, and that he has a personal belief in those articles of faith.

Interpreting section 68(3) and 68.1, the Board noted that the legislation required that a two-fold test be satisfied:

(1) The religious group of which the member belonged to has as one of its articles of faith that members of the church are precluded from being members of and financially supporting any union or professional association, and

(2) The employee himself believes in that article of faith.

In reviewing the evidence before it, the Board concluded that members of the Applicant's religion were not prohibited from being members of a union or actively supporting unions financially or otherwise.

In the circumstances, the Board determined that the Applicant had failed to meet the test of subsection 68(3)(a) and 68.1(b)(i) of the Act, and accordingly denied his application. It was therefore unnecessary for the Board to deal with the personal beliefs of the Applicant as referred to in subsection 68(3)(b) and 68.1(b)(ii) of The Labour Relations Act.

CASE NO. 231/86/LRA
CANADIAN ASSOCIATION OF INDUSTRIAL, MECHANICAL AND ALLIED WORKERS, LOCAL NO. 1 and KODIAK INDUSTRIES LTD. and A GROUP OF OBJECTING EMPLOYEES

Reasons for Decision dated July 24, 1986

The Applicant union applied to the Board to be certified for a group of employees at Kodiak Industries. A petition objecting to the application signed by a total of five employees was

filed with the Board pursuant to section 38(2) of The Labour Relations Act. It was alleged that the card of an employee who terminated his membership in the union prior to the date of the application was filed with the Board in support of the application for certification. Further, it was alleged that the information contained on the card was altered without the knowledge or authorization of the employee.

The Board determined that in view of all of the circumstances, the employee's membership card in question did not represent his true wishes as of the date the application for certification was filed with the Board; his card should not therefore have been filed in support of the application. The Board further stated that it did not condone the alteration of membership cards by another party in the area of the card normally filled out by the Applicant.

Having rejected the membership card in question in support of the application for certification, the support level for the application fell below 45%. Accordingly the application for certification was therefore dismissed.

The Board further took the opportunity in its decision to point out that for the purposes of section 36(2) of The Labour Relations Act, relating to the need to take "reasonable and unequivocable steps" to terminate union membership prior to the date of application for certification, it would look particularly for written evidence of such determination, although each individual case would be determined on its merits.

CASE NO. 394/86/LRA
DOREEN PORTEOUS and NORTHERN GOOSE PROCESSORS LTD.

Reasons for Decision dated November 28, 1986

In 1983 and 1984 the Applicant was employed by the Respondent company as a seasonal worker. In 1985 she was not recalled to work during the fall season, nor was she called to work during the spring short "kill" in March 1986. New employees were hired to work at the plant. The Applicant filed an application with the Board alleging violation of section 7 of The Labour Relations Act by her employer in refusing to continue to employ her because she had participated in union activities and had testified in previous proceedings against the employer.

In response, the employer denied any discrimination against the Applicant. It submitted that she had been offered work during the fall season in 1985 and replied that she would not be available to work until mid October. It would have been impractical to call in the Applicant in mid October as the fall season ended on November 10, 1985. Further the employer would have to terminate someone else in order to hire her. With respect to the spring 1986 season, the employer

maintained that employees who had worked the previous fall season were given priority. New people were only hired because they attended at the plant at a time when immediate assistance was required.

The Board found that the employer discharged the onus of showing that the company had not committed an unfair labour practice by not hiring the Applicant for the fall 1985 season. The company did offer the Applicant a job but she declined it. With respect to the spring 1986 season however the Board concluded that the employer did not give proper consideration to the Applicant's application for employment. The Board could not accept that a policy of priority for employees working for the employer in 1985 would reasonably have excluded the Applicant given her history of employment with the company, and ordered the employer to pay $500 to the employee.

CASE NO. 490/86/LRA
UNIVERSITY OF MANITOBA FACULTY ASSOCIATION AND UNIVERSITY OF MANITOBA

Amended Reasons for Decision dated December 31, 1986

The Applicant applied for certification of part-time sessional lectures employed by the Faculty of Arts at the University of Manitoba.

The employer argued that a group of part-time sessional lectures of a single faculty did not constitute a unit appropriate for collective bargaining. There were 21 faculties and schools at the university, and each could not be allowed to negotiate a separate collective agreement. It was argued therefore that the appropriate collective bargaining unit for part-time employees should cover all faculties and schools at the university and not a single faculty.

The Applicant asserted, that a lack of interest shown on the part of sessional employees and other faculties, and a lack of community of interest between sessional employees of one faculty and those employed similarly in other faculties made it difficult to organize on a university basis, as opposed to a faculty basis.

The issue before the Board was whether the appropriate bargaining unit of part-time sessional employees, excluding professional employees practising their profession, should therefore consist of all such part-time sessional employees employed by the university, or ought the Board consider that those employees solely in the Faculty of Arts constitute an appropriate bargaining unit. In determining what was an appropriate bargaining unit for purposes of certification, the Board, in referring to previous labour jurisprudence, noted the following significant factors: the unit should not be of a size that makes it impractical to organize the employees

therein for collective bargaining purposes, and not so small as to create the potential for an unwieldly number of units in one employer's geographic location; and the unit must be realistic in size.

In dismissing the application for certification herein, the Board determined, pursuant to sections 30(1), (2) and (3) of The Labour Relations Act that the proposed unit was not appropriate for collective bargaining. The unit should include employees of other faculties who share common concerns regarding working conditions. Further, if the unit proposed by the Applicant were deemed appropriate for collective bargaining, the part-time employees could be splintered into at least 2 and perhaps many more units. This would therefore produce an irrational and unwieldly bargaining structure at the university.

CASE NO. 139/86/LRA
TAN-JAY CO. and INTERNATIONAL LADIES' GARMENT WORKERS UNION, LOCAL 286

Reasons for Decision dated February 13, 1987

In this particular matter before the Board, the Board took the opportunity to discuss its authority and power to rescind a previous Order or decision pursuant to section 121.3(3) of The Labour Relations Act, which authorizes the Board or any panel of the board to review, rescind, amend, alter or vary any decision, order, direction, declaration or ruling made by it, and to re-hear any matter if it considers it advisable to do so. The Board noted that its rules in section 17 of Manitoba Regulation 65/85 addressed section 121.3(3) of the Act, authorizing the Board to review, rescind, etc. an order, but did not set out any rule affecting an application to "rescind" an order or decision; nor did the word "rescind" appear in subsection 17(1)(c) and 17(2) of the Regulation.

After reviewing Labour Board jurisprudence from Ontario, the Board was of the view that a party seeking reconsideration and review for purposes of rescission of a Board decision must establish that events subsequent to the Board's decision have altered the bargaining situation substantially so as to make the initial order clearly inappropriate.

CASE NO. 924/86/LRA
MANITOBA FOOD AND COMMERCIAL WORKERS LOCAL 832 and COLLEEN ALLAMAN and WESTFAIR FOODS LTD.

Reasons for Decision dated March 17, 1987

In this matter, the issues before the Board concerned the status of the Applicant Union to make an application on behalf of the employee/person concerned, and whether the handling of another company's products by the employee was work within the contemplation of subsection 12(1) of The Labour Relations Act

in particular "work which would directly facilitate the operation or business of another employer whose employees within Canada are locked out or on a legal strike". The Board was further faced with the question of whether it could issue a declaration in reference to the issue under section 12(1) and further whether the employer had acted contrary to subsection 12(2) of the Act and thus committed an unfair labour practice.

The Board heard uncontraverted evidence to the effect that employees of Gainer's had been on strike since June of 1986. The employee, for whom the Applicant had made an application on her behalf, testified that she had been employed by the Respondent employer as a meat wrapper and that she began refusing to handle Gainer's products in August, 1986.

On the preliminary issue of status, the Board was satisfied that the bargaining agent was capable of filing an application on behalf of the employee concerned and in that context was acting as a representative and not necessarily a party to the proceedings.

With respect to the issue as to whether or not the handlng of Gainer's products in this matter was work contemplated by section 12(1) of the Act, the Board reviewed its previous decision in Canada Packers Inc. and U.F.C.W. Local 111, and concluded that the products were clearly identifiable and inseparable, and that the routing of the products was not sufficient in itself to alter the fact that the handling of the products was work that directly facilitated the struck employer. Thus a declaration to that effect pursuant to section 121.2(5) of the Act would be issued.

As to whether the actions of the employer in this case were of a disciplinary nature and therefore constituted the commission of an unfair labour practice contrary to subsection 12(2) of the Act, the Board reviewed previous jurisprudence in this area, including the Canada Packer's Inc. case, supra. The Board was of the view that in a situation where the exercising of an employee's rights under section 12 would be within an acceptable "degree of tolerable inconvenience", the employer should offer the employee alternate work if it is available. Furthermore the onus would be on the individual who is exercising rights under section 12 of the Act to demonstrate that the resultant costs and disruptive effects would be within that "acceptable degree of tolerable inconvenience", and that a result, a failure to offer alternative work would be unreasonable in the circumstances.

In the case before it, the Board concluded that the Applicant had not satisfied it that this test had been met. The Board made it clear that had the test been met, the onus would then have shifted to the employer to satisfy the Board that its actions were appropriate in the circumstances and not disciplinary in nature.

CASE NO. 680/86/LRA
NORMA DOERKSEN and MANITOBA ORGANIZATION OF NURSES ASSOCIATION (MONA) KILLARNEY NURSES MONA, LOCAL 85 and TRI-LAKE HEALTH CENTRE

Reasons for Decision dated March 25, 1987

The Applicant filed an application with the Board seeking a determination pursuant to s. 68(3) of The Labour Relations Act. The Applicant submitted that she was employed as a licensed practical nurse at the Respondent Health Centre, and that as a member of her congregation, she was conscientiously opposed to helping and contributing to the Respondent Union, being the certified bargaining agent at the place of employment. The Applicant further stated that although her church discouraged membership in and payment of dues to unions, it did not take the same stand as to membership in the Manitoba Association of Licensed Practical Nurses.

After referring to its two-fold test developed in the Lumsden decision when dealing with applications filed pursuant to s. 68(3) and 68.1 of the Act, the Board noted that in the case before it, it was satisfied that the Manitoba Association of Licensed Practical Nurses was a "professional association" as contemplated by subsection 68(3)(a) and 68.1(b)(i) of the Act. The Applicant was required to be (and was) a member of that Association if she wished to practice as a licensed practical nurse. However the testimony was clear that the religious group to which she belonged did not take issue or discourage her membership in this professional association.

Accordingly the Board was satisfied that the Applicant had failed to meet the first test of demonstrating that she belonged to a religious group which procluded membership in and financial contribution to "any union or any professional association". The application was therefore dismissed.

PART B

DECISIONS RENDERED PURSUANT TO THE PAYMENT OF WAGES ACT

CASE NO. 31/86/PWA
ABALON CONSTRUCTION LIMITED and JOE ANDRONYK

Reasons for Decision dated September 22, 1986

The Employee claimed that the Employer did not pay him wages, overtime wages, and vacation wages for times specified by the former. He was hired to perform various house repair related duties, and was responsible for recording his daily hours of work, as well as those of his helper. Allegations of unsatisfactory work and over-statement of hours worked were made against the Employee.

The Employer raised the argument that the Board was without jurisdiction to hear the matter, given that the Director of Employment Standards had filed a caveat, prior to the expiry of seven days as provided in subsection 8(5) of The Payment of Wages Act whereby upon expiry of the specified time the Employer may request that the matter be referred to the Board for determination. The Employer further alleged that the caveat had been filed prior to the filing of an order, as envisaged by subsection 8(6) of the Act. As such, there had been a denial of natural justice.

The Board found that the matter was properly before it insofar as subsection 7(5) of the Act provides the Director of Employment Standards with the authority to file a caveat on behalf of an Employee merely on the strength of the complaint being filed with Employment Standards Division. Regarding a denial of natural justice, the Board was satisfied that there had not been a denial of same as a consequence of filing the caveat prior to the expiry of the Employer's right to have a Director's order referred to the Board for a determination.

The Board was satisfied that all claims for outstanding wages, except overtime wages, had been substantiated by the Employer, and as such the Employee's claim, adjusted accordingly, was allowed.

CASE NOS. 546 AND 547/86/PWA
CLARKSON GORDON INC. and F. W. DUPAS and E. G. STANGER

Reasons for Decision dated November 13, 1986

The Employees alleged unpaid wages in lieu of notice upon termination of employment. The Board was required to decide two issues:

Issue 1: Whether the application was brought against the Company in its own capacity, as opposed to its capacity as a receiver-manager, covering the assets and business of another company.

Clarkson Gordon Inc. (the Company) was appointed receiver-manager of General Aluminum Forging Inc. (the other Company). The employees of the latter were advised by the former that future employment would not be guaranteed other than on a day-to-day basis and that wages due and owing at the time of appointment would be met or paid. The Company further advised that employees continuing in employment would be paid on a normal pay period basis with cheques to be issued by "General Aluminum Forging Inc. by its Receiver-Manager Clarkson Gordon Inc." The Employee's understanding of the matter was that the Company had become their Employer, not as receiver-manager, but in its own right.

The Board was satisfied on the evidence that the Company represented itself entirely in the capacity of receiver-manager and did not purport to take over the business and retain the employees except in that capacity.

Issue 2: Whether the Company was properly before the Board regarding Employment Standards Division's order to pay unpaid wages.

The order to pay unpaid wages was issued to the Company alone. Subsection 8(3.1) of The Payment of Wages Act provides that upon the appointment of a receiver-manager to administer the affairs of an Employer, an order for the payment of wages shall be directed to the receiver-manager in addition to the Employer.

The Board ruled that as no order had been made against the Employer, the order did not comply with the requirements of the Act and so was improperly made. The claim for wages was disallowed.

CASE NO. 1120/85/PWA
TAHHAN BROS. LTD., CARRYING ON BUSINESS UNDER THE TRADE NAME AND STYLE OF JOE'S AUTO CLINIC and ROBERT VICTOR BLANDFORD

Reasons for Decision dated April 22, 1986

The Applicant filed a complaint with Employment Standards Division alleging that all wages, vacation pay, and general holiday wages had not been paid to him upon his termination of employment with the Employer.

The complaint was filed after the time allowed for filing in accordance with subsection 8(1) of The Payment of Wages Act, i.e. "... not later than 60 days after the expiration of the time provided for the payment of wages ...". Notwithstanding that the complaint was filed three months after the expiration of the 60 days, the Director of Employment Standards acted "of his own accord" pursuant to subsection 8(3) of the Act in investigating the matter, and issued an order for unpaid wages. The Employer disputed the order for payment.

The term "of his own accord" in s. 8(3), as interpreted by the Board, enabled the Director of Employment Standards to carry out routine audits without the need for a complaint, or where circumstances led him to the conclusion that an investigation should be undertaken. The Board found that in accordance with subsection 8(3) of the Act the Director of Employment Standards did not act "of his own accord" in these circumstances. It concluded that it was not the intent of the Legislation to enable the Director of Employment Standards to pursue a matter on behalf of an employee who had initiated a complaint which had been determined to be untimely.

The Board dismissed the claim issued by Employment Standards Division on behalf of the Applicant.

CASE NO. 174/86/PWA
BRAEMAR BAKERY LTD. and MILLIE HICKEY

Reasons for Decision dated April 25, 1986

The Employee was responsible for filling orders with a required number of products which then were delivered to customers. Various customers indicated to the Employer that there were shortages in the delivered products.

The Employer consequently deducted the alleged shortages from the Employee's pay. These deductions were made on the basis of a provision on the application for employment with the Employer, which in essence, stated that all employees were responsible for any cash loss or mishandling of products made by him/her; and that given such a loss, the Employer, at his discretion, could make deductions from an employee's pay cheque to recover such losses. The Employer's position was that the Employee was responsible for the shortages due to the fact that she had packed the orders.

The Board held that once the products were packed, the Employee was no longer in control, since delivery was effected by another employee. Further, the Board ruled that deductions made by the Employer were without the admission or expressed authorization of the Employee. The latter's claim for unauthorized deductions was allowed.

CASE NO. 581/86/PWA
FRANK ANDREWS, CARRYING ON BUSINESS UNDER THE TRADE NAME AND STYLE OF ANDREW'S CONTRACTING and DENNIS HAYNES, ET AL

Reasons for Decision dated January 26, 1987

The Company entered into an agreement with another construction firm whereby the latter would pay a specified wage per employee to the Company. The Company would be responsible for the administration and payment of wages and employment benefits.

Following a complaint by an employee regarding vacation pay entitlement, an audit was conducted by Employment Standards Division resulting in an order against the Company for unpaid wages. The Company claimed that it knew nothing of the minimum wage requirements of The Construction Industry Wages Act and regulations, and raised an argument that employees who had voluntarily entered into such agreement were precluded from raising the issue.

The Board found that with one exception the Company hired skilled labour within the contemplation of the Act. Regarding the Company's defence, the Board cited subsection 14(2) of the Act which specifically precluded the same. On that basis the Board found that the employees were entitled to receive outstanding wages, vacation wages, and general holiday wages.

CASE NO. 208/86/PWA
IMPERIAL TAXI BRANDON (1983) LTD. and BRUCE TRIPP, RICHARD VAN BERKEL, and JAMES HUTCHESON

Reasons for Decision dated January 23, 1987

The Applicants leased and drove the Company's taxi cabs, and claimed that wages, vacation wages, and overtime wages were owing to them by the Company.

The Employer's position was that the Applicants were strictly independent contractors, and so the latter could not avail themselves of the provisions of The Employment Standards Act. Among other things, the Company owned the vehicles, provided vehicle licensing and insurance, had its name appear on the vehicle, and paid all expenses excluding gas. A per kilometer fee was paid by the lessees to the Company. The latter had disciplined drivers with respect to dress code and passengers other than fares.

The Board reviewed the contractual agreement to determine whether or not a master-servant relationship existed. It considered the following: (a) the degree of control over the method of providing goods and services; (b) ownership of the tolls; (c) chance of profits; and (d) risk of loss. Additional considerations were: (a) the statutory purpose test; and (b) whether a party is carrying on business on his own behalf or for a superior.

The Board was satisfied that the degree of control exercised by the Company over the drivers was such that it concluded that the latter were employees. One Applicant's claim was ruled untimely, and so was dismissed; another Applicant withdrew his claim; and the remaining Applicant's claim for outstanding wages and vacation wages was allowed.

CASE NO. 1048/85/PWA
PHILLIP KIVES and SOCORRO KEAN

Reasons for Decision dated August 28, 1986

The Employee had worked as a companion to the Employer's aged mother who resided at a nursing home. The Employee alleged that during the nearly two years of such employment she was not paid any overtime wages or general holiday pay, nor did she receive any vacation allowance upon termination of her employment, as provided for under The Payment of Wages Act.

The Employer argued that the Employee fell outside the ambit of the Act, as a result of the exceptions to the definition of "employee" as contemplated by subsection 2(1)(g)(iii.i) of The Employment Standards Act, i.e. employee did not include "a person employed in a private family home ... of the household ...". The Board held, on the facts of the situation, that the exception did not apply to the Employee, as in its opinion the nursing home in question was not a "private family home" as contemplated by the legislation.

In the result the Board allowed the employee's claim for wages owing.

CASE NO. 788/86/PWA
FRANK WILEY LIMITED and DENNIS K. VAUGHAN

Reasons for Decision dated February 18, 1987

In this case the Board was required to determine whether the Employee had received all wages upon termination of employment from the Employer.

The Employee had injured his back while on the job and was away for a week as a result of the injury. On returning to work, he was asked to drive to Saskatchewan. He agreed, but indicated that he was unable to do any lifting. On returning to Winnipeg, the Employee was asked by a foreman to unload a semi-trailer. In reply to the request, the Employee stated that he could not do any heavy lifting. The matter was communicated to the Employer, and after some discussion between the Employer and the Employee, the latter's employment was terminated. The Employer then prepared the Employee's cheque containing his final pay and vacation pay.

The Board heard that the Employee was alleged to have said that he was "nothing but a glorified delivery boy", and that he no longer wanted to work there. On the balance of probability, the Board was satisfied that the Employee, in fact did voluntarily terminate his employment. Therefore, he was not entitled to receive wages in lieu of notice from the Employer.

CASE NO. 492/86/PWA
EXECUTIVE DRYWALL CO. and GEORGE WAITE

Reasons for Decision dated November 7, 1986

The Employee worked for the Employer as a machine drywall taper. He was prompted to file a complaint with Employment Standards Division as a result of the Employer's failure to pay for a significant number of hours worked. He was advised by the Division that his rate of pay for work done on commercial sites, on which the Employee had worked about 50 percent of the time, should have been $13.45/hour and not $4.50/hour as he had been paid. The Employee alleged that all wages, vacation wages, and general holiday wages were unpaid upon termination of employment.

The Employer objected to paying the higher rate of pay claimed by the Employee, and testified that the latter was "totally inexperienced". Further, he maintained that the "training" rate paid to the Employee was justified.

The Board determined that the wages that the Employee ought to have been paid were governed by The Construction Industry Wages Act. Accordingly, the minimum wage for a general

construction labourer employed in commercial construction in Winnipeg was $13.45/hour. Minimum wage for a labourer in Greater Winnipeg employed in house building was $8.00/hour.

Based on the above rates and given the Employee's breakdown of time worked, the Board allowed the claim for unpaid wages.

CASE NOS. 536 and 537/86/PWA
CRAVEN HILL DATA CORPORATION and JAMES E. TAYLOR, ET AL

Reasons for Decision dated October 31, 1986

In March, 1986, a Complainant enquired as to whether or not he was entitled to receive pay for work done from August 9 to October 7, 1985. He was advised by an Employment Standards Division officer to complete and sign a complaint for unpaid wages. Upon investigating the Company's wage record on his own accord, the officer advised another individual to file a similar complaint, the former knowing that an individual complaint made in March, 1986, was too late to recover wages due and payable in 1985. The latter Complainant alleged unpaid wages from October 7 to December 15, 1985. Upon receipt of the complaints, the Company was alleged to have acknowledged outstanding payments to several employees, including the two Complainants. On December 15, 1985, the Employers named in the case had resigned as directors/officers of the Company.

In contention was the company's claim that during the period in question the Complainants were not its employees. The Company further contended, that as the complaints had been signed in March 1986, they were time-barred by virtue of subsections 3(1) and 8(1) of The Payment of Wages Act.

The Board heard evidence that the Complainants were told individually that they were "hired" and made "quasi-employees" and that they both worked during the period in question on behalf of the Company. Based on that evidence, the Board found the Complainants were, in fact, employees of the Company. Regarding the argument that the complaints were filed late according to statute, the Board concluded that in the circumstances of the case the claims of the Complainants were not time-barred. It further ruled that having resigned on December 15, 1985, the Employers were liable only for unpaid wages due to an employee for work performed prior to December 15, 1985.

In the result, the Board allowed the claim of the Complainants and dismissed all other claims against the Employers, as those claims were for periods after December 15, 1985.

CASE NOS. 415-417/86/PWA
PROGRESS PLASTICS LTD. ET AL

Reasons for Decision dated November 17, 1986

This case came before the Board by way of individual employee complaints made to the Employment Standards Division, whose orders pursuant to s. 8 of The Payment of Wages Act were ultimately referred to the Board pursuant to s. 8(5) of the Act.

Of interest in the Board's decision was a consideration of the terms "employee" and "employer" (sections 1(c) and 1(d) of The Payment of Wages Act respectively) in relation to whether the production/personnel manager of the employer was indeed an employee for purposes of his claim for wages under the Act.

The Board heard evidence that the Applicant was responsible for the hiring of many employees, and his submission of recommendations to the employer were rarely, if ever rejected. As well, he would recommend specific pay raises for his production crew which, after the formality of approval, would be implemented.

The Board noted that section 1(c) prevented anyone who was an employer, as defined in section 1(d), from being an employee. The Applicant here appeared to fall within the definition of "employer" under the Act by virtue of the fact that he was responsible at least "indirectly for the engagement or employment of, or payment of wages to a person employed ...". Thus the Applicant failed to come within the definition of "employee" under the Act, whose provisions and remedies (apart from alternative civil remedies available to him) were not available to him.

As the issue had come before the Board for the first time under the amendments made to this section of the Act in 1985, the Board expressed concern that the legislation, as written, disenfranchised many individuals who ought to be able to have access to the legislation.

COURT ACTIVITY

SUMMARY NO 1:

VERSATILE CORPORATION vs. UNITED AUTOMOBILE WORKERS UNION and THE MANITOBA LABOUR BOARD

May 20, 1986
Manitoba Court of Queen's Bench
Q.B. Suit No. 85-01-07661
Reported at (1986) 41 Man. R. (2d) 128.

The Union was certified in July 1985 as bargaining agent for employees of the employer. After failing to negotiate a collective agreement to replace a previous one which had expired, the employer locked out its employees. The Board held that by locking out the employees, the employer had committed an unfair labour practice contrary to sections 10(2) and 77(1) of The Labour Relations Act. The employer then applied to quash the Board's decision.

The Court held that it would not interfere with the Board's decision if the Board acted in good faith and if the decision could be rationally supported on an interpretation which the legislation in question could reasonably bear. The Board went on to discuss the issue and illegal lockouts of employees and held that a lockout of employees within 90 days of certification of a bargaining unit constituted an unfair labour practice contrary to sections 10(2) and 77(1) of The Labour Relations Act.

The employer also attacked the Board's Order extending the 90 day freeze on a number of grounds, including the ground that section 121.3(6) of The Labour Relations Act, which made it a condition precedent of judicial review that the Applicant has first requested the Board to review the impugned decision, was unconstitutional, alleging that its effect was to make the members of the Board judges of a section 96 (of the Constitution Act 1867) Court, the latter being reserved to the exclusive power of the federal government. The Court held however that there had been no attempt to completely immunize the Board from judicial review on jurisdictional matters, section 121.3(6) indeed conferring on the courts and reserving to them the power of judicial review on grounds of want of jurisdiction or failure of natural justice. Thus this section was held to be constitutional.

The Manitoba Court of Queen's Bench dismissed Versatile's application.

SUMMARY NO. 2:

HUBBLE, ET AL vs. MANITOBA LABOUR BOARD AND MANITOBA FOOD AND COMMERCIAL WORKERS LOCAL 832

Manitoba Court of Queen's Bench
May 20, 1986
Reported at (1987) 43 Man. R. (2d) 33.

A union was certified as a bargaining agent for a group of employees of Metropolitan Stores. No agreement was reached between the parties and eventually the union applied to have the Board settle the terms and conditions of a first collective agreement. Prior to the hearing the employer applied to challenge, under the Charter of Rights and Freedoms, those sections of The Labour Relations Act which required the inclusion of certain provisions in all collective agreements and which permitted the Board to settle first collective agreements. The employer applied for a stay of the Board's proceedings pending the outcome of the challenge. The Board refused to grant the stay and the employer applied to the Court for the stay.

Although the Court of Queen's Bench refused to grant the stay, the Manitoba Court of Appeal granted a temporary stay of proceedings pending its deliberation on the matter of the stay itself, and subsequently granted the stay pending litigation on the Charter issue. Leave to appeal was obtained from the Supreme Court of Canada with respect to the decision of the Manitoba Court of Appeal granting the stay.

Meanwhile, with the appeal to the Supreme Court of Canada still pending, one of the employees objecting to the union certification applied for decertification of the union. The union applied for an adjournment of the decertification application until the Supreme Court of Canada rendered its decision. The Board allowed the union's application and granted an adjournment. Subsequently the employee applied for certiorari to quash the adjournment and for mandamus to compel the Labour Board to continue the hearing.

In dismissing the application, the Court noted the rather anomalous situation the Board was facing within the circumstances. The Board was placed in the position of responding to an application for decertification before it was given an opportunity under the Act to carry out its authority to settle a collective agreement under proper circumstances. In that respect, the time limits of the application for decertification were clearly in issue. Secondly, the Court noted that the union might argue that the various court applications and orders could amount to exceptional circumstances such that decertification ought not to succeed, or that efforts by the parties to reach an agreement would have been frustrated, therefore invoking the discretion conferred upon the Board in section 40(3) of The Labour

Relations Act. The Court therefore held that from the vantage point of the Board, the decision of the Supreme Court would impact on the application for decertification and was therefore relevant to the issue before the Board.

Upon review of all of the circumstances and the wide powers of the Board to control its proceedings given to it by the legislation, the Court was satisfied that the Board in this case had acted well within the ambit of its authority and that its procedural ruling to adjourn the application for decertification should not be disturbed. The Court further held that the Board anticipated some impact of the decision before the Supreme Court of Canada on its proceeding, and in that context, the adjournment could not be construed as a refusal to exercise its jurisdiction.

The Court of Queen's Bench dismissed the application by the employee both for certiorari and mandamus.

SUMMARY NO. 3:

FOUR SEASONS ELECTRICAL, MECHANICAL CONTRACTORS OF CANADA (1979) LTD. vs. PARK and THE MANITOBA LABOUR BOARD

Manitoba Court of Appeal
October 30, 1986

The issue in this case was whether the Board was correct in determining that an employee was engaged in the construction industry and therefore entitled to be paid at rates under The Construction Industry Wages Act, rather than under The Employment Standards Act.

The employer submitted that the Board had erred in law and exceeded its jurisdiction in ruling that it was engaged in the construction industry. The nature of the work considered by the Board was repairing on call by householders, apartment block owners, commercial operators and the like. The Court was of the view that the undertaking of the employer was not within the construction industry as that term was used in The Construction Industry Wages Act, nor that any regulations of that Act were effective to bring within it a business that was outside it.

In the result, the Court allowed the appeal without remitting the matter to the Board. No costs were ordered for or against the Board.

SUMMARY NO. 4:

NEPLYK, ET AL and THE MANITOBA LABOUR BOARD

Manitoba Court of Appeal (in Chambers)
November 20, 1986

The Applicants, being directors of a corporation, sought leave to appeal from a decision of the Manitoba Labour Board in relation to a matter that came before it under The Payment of Wages Act. In this particular case, the Director of the Employment Standards Division received complaints of non-payment of wages from certain employees. The work done by the employees, for which it was alleged they had not been paid, had been done more than 60 days prior to the complaints being filed, the 60 day period being contemplated by section 8(1) of The Payment of Wages Act. However the Court noted that the Director's jurisdiction to make an Order was not limited to cases in which a complaint was received but could also be made following an investigation made of his own accord pursuant to section 8(3) of the Act. The Court held that the question of whether the Director had made an investigation of his own accord or upon receipt of a complaint was a question of fact to be decided by the Board.

In the case before it, the Board accepted the testimony of the Employment Standards Officer, that he advised the employees to sign complaints notwithstanding that the 60 day period had expired because he knew that he was acting of his own accord. The Court held that in those circumstances, it was within the jurisdiction of the board to find as a fact, as it did, that the Orders of payment resulted from an investigation made of the Director's own accord and that the 60 day time limit did not apply.

As it was the view of the Court that an arguable point of jurisdiction or of law had not been raised by the Applicants, the Board denied leave to appeal to a full panel of the Court of Appeal.

The decision of the Chambers Judge of the Court of Appeal denying leave was upheld upon appeal to a full panel of the Court.

SUMMARY NO. 5:

MANITOBA PARAMEDICAL ASSOCIATION and ST. BONIFACE GENERAL HOSPITAL, MANITOBA FOOD AND COMMERCIAL WORKERS LOCAL 832 and THE MANITOBA LABOUR BOARD

Manitoba Court of Queen's Bench
Suit No. 86-01-09220
December 12, 1986

The Applicant Association applied for an Order of certiorari quashing the Order of the Manitoba Labour Board dated January 13, 1986 in which the Board had rescinded its previous decision issued June 27, 1985. In the latter order the Board found that the bargaining unit proposed by the Applicant for collective bargaining, consisting of cardiology technologists and technicians employed by St. Boniface General Hospital, was appropriate. In its order of January 13, 1986 the Board stated that in reviewing the decision of the original panel, the Board was satisfied there was no compelling reason in the case to find the unit, as applied for, appropriate for collective bargaining. The Applicant thus requested an order of mandamus compelling the Board to properly determine the wishes of the employees in the unit found to be appropriate by the earlier decision of June, 1985.

The Applicant took the position that in reviewing the original panel's decision, the review panel fell into jurisdictional error and applied its policy against fragmentation of representation in such a manner as to fail to give consideration to those factors which the original panel had found, on the merits of the particular application, to have justified a departure from the policy. As a result it failed to consider all relevant criteria as found by the first panel, with the result that a patently unreasonable test was applied by the Board.

In dealing with the review power of the Board, the Court held that it was clear that there was very considerable scope and ambit for the review procedure, and the Board could, where appropriate, reconsider decisions on issues of policy or statutory interpretation and exercise its review function to interpret the law and its own policy. The Court found that the Board had not committed any error, given the circumstances and the potential impact of the decision, nor did the Court find that the Board had fettered its discretion by automatically or unthinkingly following its previous stated policy with respect to applications for certification where the employees were already represented by a certified bargaining agent.

In relation to the issue of whether the review panel misdirected itself when it reconsidered the matter and restated the onus or question facing the Applicant union in applying

for certification, the Court held that the position of the Board was consistent with those of other jurisdictions in Canada and therefore not patently unreasonable. The Court noted that the Board must have policy issues in mind at all times and so long as it considered each case before it on the merits and facts of that particular case, it did not commit jurisdictional error by ultimately deciding that the facts did not warrant a deviation from its normal stated policy. Thus for the review panel to adhere to previous practice where the existing unit was prima facie an appropriate unit, was not patently unreasonable.

As to the Applicant's argument that the review panel's decision contravened section 2(d) of the Canadian Charter of Rights and Freedoms in that it constituted an unjustified infringement on freedom of association, the Court merely noted that the weight of authority was strongly against the Applicant's contention that a decision as to which of two bargaining units a party should belong to was a matter that infringed section 2(d) of the Charter.

The Court of Queen's Bench therefore dismissed the application.

SUMMARY NO. 6:

CANADIAN ASSOCIATION OF INDUSTRIAL, MECHANICAL AND ALLIED WORKERS LOCAL NO. 1 and KODIAK INDUSTRIES LTD. and A GROUP OF OBJECTING EMPLOYEES

Manitoba Court of Queen's Bench
Judgment delivered December 23, 1986
Q.B. Suit No. 86-01-15059

The Applicant union moved by way of Originating Notice of Motion for an Order that the decision of the Manitoba Labour Board dated July 24, 1986 be quashed. The decision of the Board in question concerned a finding by the Board, as a result of evidence in relation to a membership card tendered for purposes of a certification application, that a particular employee was not a member of the union, pursuant to section 36(2) of The Labour Relations Act.

After reviewing the relevant legislation, in particular sections 31, 36 and 121.2(5) of the Act, the Court concurred that the Board indeed did have jurisdiction, under section 36(2) of the Act, to make its finding that the particular employee was not interested in belonging to the union prior to the application for certification filed with the Board. The Court therefore concluded that the Board did not commit any error of law nor did it exceed its jurisdiction as provided in The Labour Relations Act. In the result, the application was dismissed.

The Court further held that the application brought by the union was out of time in accordance with section 121.3(6) of The Labour Relations Act, there having elapsed more than 30 days from the decision of the Board to decline to review its order dismissing the application for certification of the union.

SUMMARY NO. 7:

VERSATILE CORPORATION vs. INTERNATIONAL AUTOMOBILE WORKERS UNION and MANITOBA LABOUR BOARD

Manitoba Court of Queen's Bench
March 17, 1987
Q.B. Suit Nos. 86-01-14767; 86-01-15418; 86-01-15419

The employer Versatile Corporation, applied to the Court to quash three Orders made by the Manitoba Labour Board arising out of a labour dispute which followed upon the certification of the union as bargaining agent for a unit of employees of the employer. The first Order dealt with the decision of the Board to grant an application, under section 10(3) of The Labour Relations Act, for an extension of the statutory freeze period contemplated by section 10(2) of the Act. That Order was questioned by the employer in earlier court proceedings in the Court of Queen's Bench, but was not dealt with by the Court given that the employer had failed to comply with mandatory review sections of The Labour Relations Act. The second Order under attack arose from the original finding by the Board that the employer's lockout constituted an unfair labour practice and involved an Order of the Board requiring the company to pay the employees compensation for the loss of income as a result of the unfair labour practice as well as for the loss of Unemployment Insurance Commission benefits. The third Order under attack concerned the employer's complaint against the union for failure to bargain in good faith, which application was dismissed by the Board.

In relation to the first Order, whereby the Board extended the statutory freeze period beyond 90 days, the employer alleged that it in fact had no notice that the issue would be dealt with together with other matters that were before the Board, in this case the application by the union for a cease and desist order relative to the employer's continued walk-out of employees.

In rejecting the employer's contentions, the Court noted that the Board by its enabling legislation was the master of its own procedure. The court held that it was not prepared to say that under the circumstances of the case the Board was required to mail a separate Notice of Hearing to the employer respecting the application to extend the freeze period in order to permit the Board to hear the application for extension of the freeze. As found by the Court, there were facts before the Board upon which the Board could have found that the employer had reasonable notice of the application for extension of the freeze. In any event, the Court held that whatever procedural defects may have accompanied the making of the freeze order, the latter were cured as a result of the review process that was conducted subsequently by the Board at the request of the parties.

In relation to the construction which the Board put upon the word "extension" in section 10(3) of the Act, as meaning contiguous to the 90 day freeze, the Court held that it was not unreasonable for the Board to interpret the word "extend" in such a manner as to cause it to bear a sense of continuity to that which was being extended. If an application could be filed at any time before the expiration of the statutory freeze, as contemplated by the Act, there could be occasions as in the present case where the hearing concerning the grant of extension of the freeze would take place after the initial freeze period was over. The Court therefore held that an extension granted under those circumstances would operate retroactively with no injustice being done to the statutory wording of The Labour Relations Act.

In relation to the dismissal by the Board of the employer's unfair labour practice complaint charging that the union had failed to bargain in good faith, and the allegations or jurisdictional error committed by the Board in its dismissal of the charge, the Court found that there was no suggestion that the Board did not address itself to the issue before it. Any objections of the employer relative to the Board not applying to a section as strictly and literally as the employer might have wished or that the Board took into account factors that the employer may not have wished did not go to the jurisdiction of the Board, but rather were (if anything, but without deciding the point) errors of the Board within its jurisdiction.

In relation to the Board's compensation order, the employer attacked the jurisdiction of the Board to make a compensation order which compensated employees for lost unemployment insurance benefits. The employer alleged that the Board committed a jurisdictional error in finding that lost unemployment insurance benefits were not "other loss" within the meaning of section 22(4)(d) of the Act. The Court however could see no basis for interpretive error being alleged, let alone jurisdictional error.

In the circumstances, the Court of Queen's Bench dismissed the three applications brought by the employer to quash Orders of the Manitoba Labour Board.

EXPENDITURE SUMMARY

	Estimated Expenditures	Actual Expenditures	Variance
Salaries	$367.1	$350.9	$16.2
Operating Expenditures	$137.1	$163.3	$25.8
Total	$504.6	$514.2	

Explanations

The surplus in salaries was due to recruitment of positions at a lower classification than originally estimated.

The over expenditure in Operating Expenditures was due to an increase in applications filed resulting in increased meeting costs.

TABLE 1

STATISTICS RELATING TO THE ADMINISTRATION OF THE LABOUR RELATIONS ACT
BY THE MANITOBA LABOUR BOARD

APRIL 1st, 1986 - MARCH 31st, 1987

TYPE OF CASE	Cases Carried Over	Cases Filed	TOTAL	Disposition of Cases			Number of Cases Disposed of	Number of Cases Pending
				Granted	Dismissed	Withdrawn		
Application for Certification	11	79	90	66	6	7	79	11
Application for Revocation	2	6	8	6	-	-	6	2
Application for Amended Certificate	1	77	78	61	-	1	62	16
Application re: Unfair Labour Practice	8	38	46	6	7	20	33	13
Application pursuant to Section 16[1]	5	7	12	2	5	5	12	-
Application for Board Ruling	3	14	17	4	-	5	9	10
Application pursuant to Section 75.1[2]	1	6	7	1	-	4	5	2
Application pursuant to Section 10(1)[3]	-	3	3	2	-	-	2	1
Application pursuant to Section 10(3)[4]	-	8	8	8	-	-	8	-
Application for Reconsideration	5	10	15	2	9	2	13	2
Application for Successor Rights	1	-	1	-	-	1	1	-
Application pursuant to Section 68[5]	-	7	7	-	2	3	5	2
Application pursuant to Section 17[6]	1	-	1	-	-	1	1	-
Application for Consent to Prosecute	-	1	1	1	-	-	1	-
Application pursuant to Section 103(5)[7]	-	19	19	12	-	7	19	-
Referral for Expedited Arbitration*	14	195	209	-	-	-	192	17
TOTALS	52	470	522	171	29	56	448	76

* See Table 4

KEY TO FOOTNOTES FOR TABLE 1

1 Duty of Fair Representation.

2 First Collective Agreement.

3 When an application for certification is filed with the Board, changes in conditions of employment cannot be made without the Board's consent until the application is disposed of.

4 Within the first 90 days following certification of a union as a bargaining agent, strikes and lockouts are prohibited, and changes in conditions of employment cannot be made without the consent of the bargaining agent. Applications under this sub-section are for an extension of this period of up to 90 days.

5 Re: Religious Objector.

6 Re: Access Agreement.

7 Request for the Board to Appoint Arbitrators.

TABLE 2

STATISTICS RELATING TO THE ADMINISTRATION OF THE LABOUR RELATIONS ACT
RESPECTING CERTIFICATES ISSUED

APRIL 1st, 1986 - MARCH 31st, 1987

TYPE OF CERTIFICATE ISSUED	NUMBER OF CERTIFICATES ISSUED	NUMBER OF EMPLOYEES AFFECTED
NEW CERTIFICATES	66	4,603

TABLE 3

STATISTICS RELATING TO THE ADMINISTRATION OF THE LABOUR RELATIONS ACT
RESPECTING REPRESENTATION VOTES

APRIL 1st, 1986 - MARCH 31st, 1987

TYPE OF APPLICATION INVOLVING VOTE	Number of Votes Conducted	Number of Employees Affected by Votes		Applications GRANTED After Vote	Applications DISMISSED After Vote	Outcome Pending
Certifications	7	275	N/A	5	2	-
Pre-Hearing (Certification)	1	167	Number of Pre-Hearing Votes Counted 1	1	-	-
Revocation	1	10	N/A	1	-	-
Pre-Hearing (Revocation)	-	-	Number of Pre-Hearing Votes Counted -	-	-	-
Termination of Bargaining Rights	-	-	N/A	-	-	-

TABLE 4

STATISTICS RELATING TO THE ADMINISTRATION OF THE LABOUR RELATIONS ACT
RESPECTING REFERRALS FOR EXPEDITED ARBITRATION

APRIL 1st, 1986 - MARCH 31st, 1987

Cases Carried Over	Number of Referrals Filed	TOTAL	Number of Cases Mediator Appointed	Disposition of Cases			Number of Cases Disposed of	Number of Cases Pending
				Settled by Mediation	Settled by Parties	Settled by Arbitration		
14	195	209	162	120	46	26	192	17

TABLE 5

STATISTICS RELATING TO THE ADMINISTRATION OF THE EMPLOYMENT STANDARDS ACT

APRIL 1st, 1986 - MARCH 31st, 1987

TYPE OF CASE	Cases Carried Over	Number of Applications Filed	Total	Rulings Made	Applications Withdrawn	Not Proceeded with By Applicant	Number of Cases Disposed of	Number of Cases Pending
Applications pursuant to Section 32	24	309	333	281	8	8	297	36
Applications pursuant to Section 35	21	68	89	64	11	-	75	14

TABLE 6

STATISTICS RELATING TO THE ADMINISTRATION OF THE PAYMENT OF WAGES ACT

APRIL 1st, 1986 - MARCH 31st, 1987

TYPE OF CASE	Cases Carried Over	Number of Applications Filed	Total	Orders Issued by the Board	Applications Withdrawn	Cases Disposed of	Cases Pending
Applications pursuant to Section 8	150	360	510	313	37	350	160

TABLE 7

STATISTICS RELATING TO THE ADMINISTRATION OF THE VACATIONS WITH PAY ACT

APRIL 1st, 1986 - MARCH 31st, 1987

TYPE OF CASE	Cases Carried Over	Number of Applications Filed	Total	Orders Issued by the Board	Claims Dismissed	Claims Withdrawn	Number of Cases Disposed of	Number of Cases Pending
Plant Vacation Shutdown	-	2	2	1	-	-	1	1

TABLE 8

STATISTICS RELATING TO THE ADMINISTRATION OF THE
WORKPLACE SAFETY & HEALTH ACT
BY THE MANITOBA LABOUR BOARD

APRIL 1st, 1986 - MARCH 31st, 1987

TYPE OF CASE	Cases Carried Over	Number of Applications Filed	Total	Orders Issued	Applications Withdrawn	Number of Cases Disposed of	Number of Cases Pending
Application for Remedy of Alleged Discriminatory Actions	1	41	42	-	42	42	-
Appeal from Director's Order	1	12	13	2	6	8	5

TABLE 9

FIRST AGREEMENT LEGISLATION
REVIEW OF CASES FILED
APRIL 1st, 1986 to MARCH 31st, 1987

UNION	EMPLOYER	DATE OF APPLICATION	OUTCOME OF APPLICATION	CURRENT STATUS
1. Manitoba Food & Commercial Workers, Local 832	Victoria Inn	April 4, 1986	Parties voluntarily entered into a collective agreement. Application withdrawn. Expiry date: December 31, 1987.	First contract in effect.
2. United Auto Workers, Local 144	Equinox Industries Ltd., Operating name: TIMNA ROTATIONAL MOULDERS OF CANADA (Applicant)	April 14, 1986	Parties voluntarily entered into a collective agreement. Application withdrawn July 30, 1986. Expiry date: September 1, 1987.	First contract still in effect. (In July 1986, the Employer applied to the Board for review of a Board decision re: Board's refusal to grant Leave-to-Withdraw on the grounds of the constitutional validity of Sec. 75.1 and the Board's authority to settle a first collective agreement. In July, 1986, the application for review was withdrawn, after the parties reached a settlement of a first collective agreement.)
3. United Food and Commercial Workers International Union, Local 111	IKO INDUSTRIES LTD.	October 24, 1986	Board imposed first collective agreement. Expiry date: December 22, 1987.	First contract in effect.
4. Retail, Wholesale and Department Store Union	STYLERITE DEPARTMENT STORES LIMITED	December 14, 1986	Parties voluntarily entered into a collective agreement. Application withdrawn. Expiry date: May 31, 1989.	First contract in effect.
5. Canadian Union of Restaurant and Related Employees, Hotel Employees, Restaurant Employees, Local 88	Moore and James Food Services Limited, Operating name: SWISS CHALET CHICKEN AND RIBS	December 30, 1986	Parties volunarily entered into a collective agreement. Expiry date: March 5, 1988.	First contract in effect.
6. Int'l Union of Engineers, L. 901 & Int'l B'hood of Electrical Workers, L. 2085.	M.W. ORBANSKI LTD.	February 17, 1987	Pending	30-day extention granted to settle - time limit expires May 8, 1987. Post conciliation settlement pending.